

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.606 OF 2005

Sou. Ratan Dattatraya Galinde & Ors. Appellants

Versus

Shri Babasaheb Dattatraya Galinde & ors..

Vijay Balasaheb Yadav .. Respondents

Mr.Rahul S. Kate for appellants

Mr.A.A.Kumbhakoni with A.P.Kulkarni for respdt nos.1 & 2

CORAM : P.V.KAKADE, J.

DATE : 12th JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by Addl. District Judge, Baramati dated 21.7.2003 allowing the appeal and setting aside the judgment and order passed by Civil

Judge, Junior Division Baramati dated 26.4.1993 dismissing the plaintiffs' suit for partition and possession of the suit shop.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs had filed the suit for partition and possession of the suit shop as it was comes to his share against the defendants. The defendants challenged the suit on the ground that earlier there was compromise between the parties in the earlier Suit being Reg. Civil Suit No.30 of 1987 and said compromise was binding on the parties and therefore, the suit was not tenable against them and on such and other grounds the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that there was conclusive partition on 28.6.1982 between the parties and there was valid and effective compromise between the parties in the earlier suit, which was binding on the parties, and therefore, the present suit for partition and separate possession was not tenable and hence the

suit came to be dismissed. The appeal was carried to the District Court. The learned Addl.District Judge after hearing both the parties came to the conclusion that the suit was tenable and plaintiff was entitled to recover possession of Municipal Shop NO.3 as described in Schedule para 3 of the Plaint and decreed the suit allowing the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The learned lower appellate court judge has rightly appreciated the entire factual matrix as well as relevant law applicable to the case. The learned counsel for the appellants submitted that by virtue of Section 47 of Civil Procedure Code all the questions arising between the parties to the suit in which decree was passed, and relating to the exclusive possession and satisfaction of the decree shall be determined by the court not by separate suit. Thus it was submitted that the separate suit was not maintainable and there was decree on the basis of compromise Exh.15. Copy of the document of compromise is provided for my perusal wherefrom, it is seen that the suit shop was given to the share of the plaintiff-respondent and all the

documents were handed over to the plaintiff-respondent in relation to the said shop. It is pertinent to note that what was given was the document pertaining to the shop and not the possession of the shop to the plaintiff-respondent by virtue of the said compromise decree. The dispute arose when it was found that the said shop was not handed over to the plaintiff - respondent and hence the suit came to be filed.

. The learned lower appellate court was of the view that there was no executable decree under the compromise and therefore, the suit was maintainable in law. He relied upon the Apex Court ruling in the case of **Brij Kishor Prasad Singh vs. Jaleshwar Prasad Singh** reported in **AIR 1973 SC 1130** wherein it was observed that when the party was in constructive possession of the property after the compromise, a suit for recovery of Khas possession was not barred by Section 47 of the Civil Procedure Code. Moreover, it is to be noted that even if it is assumed for a moment that execution proceeding is filed on the basis of said compromise decree, it cannot be executed because what was handed over to the plaintiff was the only document and not the suit shop and the right to get the suit shop consequent

upon the agreed partition was required to be implemented by way of separate suit. I fully agree with the view taken by the lower appellate court judge. There are no other substantial question of law involved in this appeal. Hence, I hold that there is no merit in the appeal and stands dismissed with no order as to costs.

5. Consequently Civil Application No.310 of 2005 also stands dismissed with no order as to costs.

6. At this stage the learned counsel for the appellants prays for Stay of the order. In view of the facts and circumstances the order stands Stayed for six weeks.